intend that it should be a present and actual marriage, and where the marriage was never consummated. *Clark* v. *Field,* 13 Vt. 460. So, where the authorities of a certain town hired A., who resided in another town, to marry B., a pauper, in order to impose B.'s support upon that town, A. never intending to fulfill the obligations of marriage, the marriage was annulled on B.'s petition. *Barnes* v. *Wyethe,* 28 Vt. 41.

Mere words without the intention corresponding to them, will not constitute a marriage, but the words are evidence of this intention, and, if once exchanged, it must be clearly shown that both parties understood that they were not to have any effect. *McClurg* v. *Terry, supra.*

In a suit for annulment of a marriage the burden is upon the plaintiff to sustain his material allegations, for the marriage is *prima facie* valid. *Bassett* v. *Bassett,* 9 Bush (Ky.) 696. And in view of the peculiar nature of the contract of marriage, the courts will not grant a decree of annulment except upon the production of clear, satisfactory and convincing evidence. *Dawson* v. *Dawson,* 18 Mich. 334; *Powell* v. *Powell,* 27 Miss. 783. Such a decree will not be given upon the uncorroborated testimony of the plaintiff. *Crane* v. *Crane,* 62 N. J. Eq. 21, 49 Atl. 734; *Bange* v. *Bange,* 46 Misc. Rep. 196, 94 N. Y. Supp. 8.

The fact that the testimony of the plaintiff was for the most part uncorroborated seems to have been controlling in the decision in the instant case.

WILLS—CONTINGENT WILLS—WHEN CONSTRUED UNCONDITIONAL AND PERMANENT—WHEN CONSTRUED CONDITIONAL OR CONTINGENT.—The decedent, before going to the hospital for a slight operation, wrote the following letter to her aunt: "On Sunday evening I go to St. Elizabeth's Hospital to have a slight operation. I do not anticipate any trouble, but no one never knows. If anything should happen to me, I want you to do this for me," etc. The decedent recovered from the operation and gave the letter to the beneficiary, informing him that it was her will. Later on, she died and the letter was offered for probate as her will. *Held,* the letter constituted a conditional will which was revoked by her recovery from the operation. *Walker, Adm'r* v. *Hibbard,* 185 Ky. 795, 215 S. W. 800.

The law looks with disfavor upon conditional wills, and, unless the intention to make the will contingent upon a certain event is clearly and unequivocally shown, the courts will construe the will as unconditional and permanent. The courts generally agree upon the law involved, but the interpretation of the particular facts in each case would tend to lead many into the belief that the cases are in irreconcilable conflict. But, as a matter of fact, this is not the case. See *Walker, Adm'r* v. *Hibbard, supra.*

Where the contemplated contingency did not take place, the following expressions have been held to make the will unconditional or permanent: "Being about to travel a considerable distance, and knowing the uncertainty of life, think it advisable to make some disposition of my estate, do make this my last will and testament." *Tarver* v. *Tarver,* 9 Pet. 174. "I am going on a journey and may, not ever return.

And if I do not, this is my last request." *Eaton* v. *Brown,* 134 U. S. 411. The facts of each case are interpreted by the court to determine whether the decedent intended the will to take effect in the general contingency of death, or only to take effect in case a specific contingency actually takes place. *Eaton* v. *Brown, supra.* "In anticipation of my departure from the City of Baltimore, and to provide for possible contingencies," etc. The court considered the quoted clause merely a matter of inducement for the making of the paper. *Kelleher* v. *Kernan,* 60 Md. 440. "Let all men know hereby, if I get drowned this morning, March 7, 1872, that I bequeath," etc. *French* v. *French,* 14 W. Va. 458. The intention to make a will conditional must appear very clearly, since there is a strong tendency on the part of the courts to construe such wills as permanent. *French* v. *French, supra.*

The courts will look to the language used in the instrument and will construe it, if possible, to mean an unconditional disposition. If it is possible to construe the language to mean that the contingency mentioned is merely the inducement for making the will, it necessarily follows that the will is unconditional. *Walker* v. *Hibbard, supra; French* v. *French, supra.* In a codicil to her will a testatrix said: "In case of a sudden and unexpected death, I give," etc. This was clearly unconditional unless accompanied by other language so clear as to admit of no other interpretation. *Skipwith* v. *Cabell,* 19 Gratt. (Va.) 758. This case was followed by a later case involving an interpretation of the following language in a letter probated as a will: "I am going away; I may never return." The court held that the will was unconditional and emphasized the rule that the intention that the will should be conditional must appear very clearly in the instrument or the court will construe it as unconditional. *Cody* v. *Conly,* 27 Gratt. (Va.), 313. An instrument beginning: "Realizing the uncertainty of life at all times, and the dangers incident to travel, I leave this as a memoranda of my wishes should anything happen to me during my proposed trip," was held to be a valid will although the testator returned from his trip and died later. *Redhead* v. *Redhead,* 83 Miss. 141, 35 South. 761. See 29 AM. & ENG. ENC. LAW, 130-132. (And see *Magee* v. *McNiel, infra,* decided in the same State, and interpreting the will under question in that case as conditional.) The following language made the will permanent: "I intend starting tomorrow to Bozeman * * *. Knowing the uncertainty and risk of the journey, * * * I do hereby will and bequeath * * *. And should anything befall me while away, or that I should die," etc. The words "or that I should die" were held to be controlling of the intention of the testator. *In re Forquer's Estate,* 216 Pa. 331, 66 Atl. 92. (See *Morrow's Appeal, infra,* for a decision in the same State on a conditional will.)

The following expressions, coupled with the surrounding facts and circumstances of each case, were held to make the will conditional: "But we do not know about these things, and it is well enough to arrange them beforehand, and if I never get back to you, I want all I have to be yours." The testator was a soldier who afterwards returned and died. The court refused to consider the will unconditional, since his dying while

away was a condition precedent to the validity of the will. *Magee* v. *McNiel*, 41 Miss. 17, 90 Am. Dec. 354. (See *Redhead* v. *Redhead, supra,* where the same court held another will unconditional.) So also, the following words were held to make the will contingent: "I am going to town with my drill and i aint feeling good and in case if i shouldend get back do as i say on this paper," etc. *Morrow's Appeal,* 116 Pa. St. 440, 9 Atl. 660, 2 Am. St. Rep. 616. (See *In re Forquer's Estate, supra,* for a decision by the same court as to an unconditional will.)

When the whole will is inspired by a possible danger from a definite source and the gift is made in terms to depend upon a failure to escape such danger, the will is conditional. Thus a will containing the words, "if any misfortune should happen to me and our boy," and "if we both should lose our life in this critical time of European War," was held to be contingent upon the death of both father and son. *In re Bittner,* 104 Misc. Rep. 112, 171 N. Y. Supp. 366. The words, "if my wife and myself should perish at sea in going or returning from Germany, I give," etc., were held to make a will conditional for two reasons; (1) that the validity of the will depended upon the death of himself and his wife at sea, and (2) that in case the specified event did not happen, then there was a different disposition of the property. *Oetjen* v. *Diemmer,* 115 Ga. 1005, 42 S. E. 388. So also, the following clause was held to make the will contingent: "I this day start to Kentucky; I may never get back. If it should be my misfortune, I give," etc. *Robnett* v. *Ashlock,* 49 Mo. 171. See also the peculiar case of *Jacks* v. *Henderson,* 1 Desaus. (S. C.) 543. And see particularly, 1 ALEXANDER, COMMENTARIES ON WILLS, § 102, *et seq.*

While numerically the cases interpreting instruments as conditional wills are few, yet since each case must stand upon its own particular facts and circumstances, it is difficult intelligently to criticise any of the decisions. The courts, in deciding the particular case, can discover the peculiar circumstances surroundng the testator at the time of making the will, and these circumstances do not always appear in the opinions. Therefore, as long as the principle of law is established and understood, the particular interpretation of each will lies in the sound judgment and discretion of the judges who have the whole record before them.